

THURSDAY, SEPTEMBER 12, 2002

The Board met at its offices at 450 N Street, Sacramento, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Klehs, Vice Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

ANNOUNCEMENT OF CLOSED SESSION

The Board recessed at 9:33 a.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

CLOSED SESSION

The Board met to discuss pending litigation, potential litigation (Govt. Code § 11126 (e)), settlements (Revenue and Taxation Code sections 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126 (a)).

The Board recessed at 11:00 a.m. and reconvened immediately in open session with Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION

James E. Speed, Executive Director, announced the appointment of Dean Kinnee, Chief, Assessment Policy and Standards Division, Property Tax Department.

SPECIAL PRESENTATION

On behalf of the Board, Mr. Andal presented to Paul Steinberg, Deputy Counsel, Second District, a resolution extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California, during his service as a Board Member's staff.

On behalf of the Board, Mr. Chiang extended its sincere and grateful appreciation to Louis Ambrose, Supervising Tax Counsel, Property Taxes Section, Legal Division, for his dedicated service to the State Board of Equalization and the State of California as he enters into his new endeavor as an administrative judge.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

William and Edna Fehring, 162752
1997, \$1.00 or more Claim for Refund
1998, \$1.00 or more Claim for Refund
For Claimant:

Hugh Goodwin, Attorney
Paul N. McCloskey, Jr., Attorney
William Fehring
Charlene Woodward, Tax Counsel

For Franchise Tax Board:

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Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether appellant has shown that the transfers of money at issue here were true loans rather than gifts to family members.

Whether appellant has shown that the alleged loans became worthless in 1997.

Appellant's Exhibit: Miscellaneous (Exhibit 9.11)

Respondent's Exhibit: Miscellaneous (Exhibit 9.12)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board reversed the action of the Franchise Tax Board.

Exhibits to these minutes are incorporated by reference.

Bronco Wine Co., 138562

9-30-96, \$35,362.00 Claim for Refund

For Claimant: John M. Youngquist, Attorney
Chris Micheli, Attorney

For Franchise Tax Board: Geoff Way, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether appellant's 215,000-gallon tanks and various concrete tank foundations utilized in manufacturing wine constitute tangible personal property, and thus constitute qualified property pursuant to Revenue and Taxation Code section 23649, subdivision (d).

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board concluded that the Franchise Tax Board's (FTB's) limited incorporation of IRC section 1245(a) and the accompanying body of law is correct; however, we hold FTB's application of this body of law in this particular case is incorrect under the facts that are in the record. These types of tanks, regardless of size, are tangible personal property and thus, qualified property. The key to this determination is whether the property can reasonably be moved and placed in productive use without damaging the property during the move. This applies only to tanks and not to the accompanying concrete slab.

Mr. Andal requested a formal opinion be written by the Appeals Section.

The Board recessed at 12:10 p.m. and reconvened at 1:35 p.m. with Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel present.

LOCAL TAX REALLOCATION HEARING

Cities of Fremont, Signal Hill & Long Beach, 172019

1-1-98 to 6-30-01, \$50,000.00 or less

For Petitioners: Robert Cendejas, Attorney for all three cities

For Sales and Use Tax Department: John Waid, Counsel

Issues: Two separate issues were consolidated for this hearing.

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a. Fremont & Signal Hill: Whether the local sales tax attributable to orders taken by salespersons at an out-of-state phone bank, or in the case of internet transactions, the out-of-state location where the order is first downloaded and processed may be allocated directly to Fremont or Signal Hill, the locations of the California stocks of goods from where the merchandise is shipped, when those stocks of goods are situated in a facility integrated with a sales office of the retailer which uses the same stock of goods to fulfill its own sales orders, or indirectly through the Alameda and Los Angeles countywide pools because the retailer has sales offices located in California.

b. Signal Hill and Long Beach: Whether the date of knowledge established in favor of the City of Long Beach by the Department in questioning a local tax allocation to the City of Signal Hill is proper under existing Board procedures.

Petitioner's Exhibit: Uniform Local Sales and Use Tax Law (Exhibit 9.13)

Action: Mr. Andal moved to grant the petition. The motion failed for lack of a second.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petitions be submitted for decision and that the Appeals Section provide the Board with its recommendation regarding the date of knowledge issue. The Board directed staff to amend Sales and Use Tax Regulation 1802, *Place of Sale and Use for Purposes of Bradley Burns Uniform Local Sales and Use Taxes* To provide that in the case of out-of-state or internet orders fulfilled through such integrated warehouse/sales office facilities, local sales tax revenue may be allocated directly to the location of the integrated facility, operative immediately as to Signal Hill and Fremont but prospectively as to all other jurisdictions.

The Board recessed at 1:25 p.m. and reconvened at 1:30 p.m. with Mr. Klehs, Mr. Parrish, Mr. Andal and Ms. Mandel present.

ADMINISTRATIVE SESSION

FISCAL YEAR 2003/04 BUDGET REDUCTION OPTIONS

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board adopted the reduction of the Vehicle Fleet Budget as part of the FY 2003/04 budget reduction.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang absent, the Board adopted the elimination of MTC Association Dues as part of the FY 2003/04 budget reduction.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board adopted the elimination of the FTA, STMA and NTA membership dues as part of the FY 2003/04 budget reduction.

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James E. Speed, Executive Director, announced that in closed session the Board adopted the following items as part of the FY 2003/04 budget reduction proposal to the Department of Finance: 1) restructure the district offices, eliminating the position of District Administrator, 2) transfer the Legislative Division to the Legal Division, eliminating three support staff positions, 3) increase the supervisor ratio to 10:1, 4) eliminate three positions in the Property Taxes Department, and 5) consolidate the Franchise Tax Board into the Board of Equalization.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board adopted the elimination of clipping services as part of the FY 2003/04 budget reduction.

SAN BERNARDINO COUNTY TIME REQUEST FOR 2002/03 LOCAL ASSESSMENT ROLL

Speakers: Donald E. Williamson, Assessor, San Bernardino County
David R. Doerr, Cal-Tax, Consultant
Alfred Polchow, Supervising Auditor-Appraiser, San Bernardino County

Miscellaneous Documents provided by San Bernardino County (Exhibit 9.14)

Action: Mr. Andal directed staff to begin the rulemaking project to map out the criteria to provide procedures for the granting of extensions to waiver requests on assessment rolls. The Board directed staff to bring back this matter to the next Property Tax Committee meeting.

PROPOSED 2003 BOARD WORKLOAD PLAN

Deborah Pellegrini, Chief, Board Proceedings Division, presented the proposed 2003 Board Workload Plan.

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board adopted the 2003 Board Workload Plan as presented.

CHIEF COUNSEL MATTERS

RULEMAKING

Discussion of Appropriate Action to be taken Regarding the Withdrawn Regulation 1616, Federal Areas, from the Office of Administrative Law

Janice Thurston, Assistant Chief Counsel, Legal Division, made introductory remarks regarding sales and use tax *Regulation 1616, Federal Areas*.

Upon motion of Mr. Parrish, seconded by Mr. Andal and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered the regulation to be placed in the 15-Day rulemaking file (Exhibit 9.15).

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The Board directed staff to hold an interested parties meeting and then to bring back the reservation-based value issue to the November Businesses Taxes Committee.

ADMINISTRATIVE SESSION**ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 9.16).

Kenneth Krikava, Business Taxes Specialist I, Special Procedures Section,
Headquarters

William Wesley Hamiel, Business Taxes Compliance Specialist, Special
Procedures Section, Headquarters

Stephanie JoAnn Sims, Tax Technician II, Excise Taxes Division, Headquarters

Action: Adopt the Board Meeting Minutes of July 9, 2002 and July 31-August 1, 2002.

Action: Adopt the corrections to the Board Meeting Minutes of March 12, 2002 and April 18, 2002.

Action: Adopt the Diesel Fuel Tax Rate for Interstate User's for the calendar year 2003 as recommended by staff (Exhibit 9.17).

Action: Adopt the Emergency Telephone Users Surcharge Rate for 2002/03 as recommended by staff (Exhibit 9.18).

Action: Adopt the Hazardous Waste and Occupational Lead Poisoning Prevention Fees for the calendar year 2003 as recommended by staff (Exhibit 9.19).

BOARD COMMITTEE REPORTS**Customer Services and Administrative Efficiency Committee**

Upon motion of Mr. Parrish, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved the Customer Services and Administrative Efficiency Committee report (Exhibit 9.20).

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Business Taxes Committee

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved the Business Taxes Committee report (Exhibit 9.21).

Property Tax Committee

Upon motion of Ms. Mandel, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved the Property Tax Committee report (Exhibit 9.22).

CHIEF COUNSEL MATTERS**RULEMAKING****Proposed Adoption of Section 100 Change to Regulation 1525.2, Manufacturing Equipment**

Janice Thurston, Assistant Chief Counsel, Legal Division, made introductory remarks regarding Sales and Use Tax *Regulation 1525.2, Manufacturing Equipment*.

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board approved the section 100 change to *Regulation 1525.2, Manufacturing Equipment* (Exhibit 9.23).

PROPERTY TAX MATTERS**Consideration of Findings and Decision*****State Assessee Petition for Reassessment of Unitary Escape Assessment***

Pac-West Telecomm, Inc. (2043), 154098

1997, \$200,000 Escaped Assessment of Unitary Property

1999, \$14,700,000 Escaped Assessment of Unitary Property

2000, \$16,200,000 Escaped Assessment of Unitary Property

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Chiang absent, the Board adopted the Findings and Decision as recommended by staff.

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Consideration of Notices and Decision***Applications for Review, Equalization and Adjustment of Assessments***

City of Long Beach, 133283

City of Los Angeles, 133353

2001 Value

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs voting no, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Chiang absent, the Board adopted the Notice and Decision as recommended by staff.

LEGAL APPEALS MATTERS, ADJUDICATORY

VTE Sports Productions, Inc., 33985, 133825

8-9-99 to 6-30-90, \$185,344.10 Tax

\$46,336.07 Penalty, Fraud

\$18,534.41 Penalty, Failure to File

Considered by the Board: August 1, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Chiang absent, the Board ordered to deny the petition for rehearing.

Young Boo Moon, 89000024880

1-1-92 to 6-30-94, \$109,333.79 Tax

\$27,333.45 Penalty, Fraud

Considered by the Board: August 1, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Chiang absent, the Board ordered to deny the petition for rehearing.

Z.E.I. Acquisition Corporation, 89002234310

10-13-93 to 9-30-96, \$73,949.90 Tax

Considered by the Board: August 1, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang absent, the Board ordered to deny the petition for rehearing.

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Conam Inspection, Inc., 89002320200

4-1-94 to 3-31-97, \$62,686.12 Tax

Conam-MMP, Inc., 89000966320

4-1-95 to 12-31-97, \$45,191.20 Tax

\$00.00 Penalty, Failure to File

Considered by the Board: August 1, 2002

Action: The Board deferred consideration of this matter.

Naranbhai Bapudas Patel, 34351

7-1-95 to 9-30-98, \$26,914.71 Tax

\$2,691.49 Penalty, Negligence

Naranbhai B. Patel and Ghanshyom K. Patel, 34350

7-1-95 to 9-30-98, \$32,066.36 Tax

\$3,206.66 Penalty, Negligence

Considered by the Board: October 3, 2001

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Home Tech Security, Inc., 97864

7-1-96 to 6-30-99, \$26,807.60 Tax

\$2,680.78 Penalty, Negligence

Considered by the Board: May 8, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Mr. Andal moved that the petition be redetermined as recommended by the Appeals Section. The motion failed for lack of a second.

Mr. Parrish moved to delete the negligence penalty, otherwise redetermined as recommended by the Appeals Section. The motion was seconded by Mr. Andal but failed to carry, Mr. Parrish voting yes, Mr. Klehs, Mr. Andal and Ms. Mandel voting no, Mr. Chiang absent.

Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Chiang absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Baron Brothers Nursery, Inc., 93435

1-1-97 to 3-31-00, \$3,823.00 Tax

\$00.00 Penalty, Negligence

Considered by the Board: May 8, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

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Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Barnes & Noble.Com, 89872

11-15-99 to 3-31-00, \$1,128,721.89 Tax

\$00.00 Penalty

Considered by the Board: February 6, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Mr. Andal moved to adopt the memorandum opinion. The motion was seconded by Mr. Parrish. Ms. Mandel offered a substitute motion to grant the petition. The motion failed for lack of a second.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel voting no, Mr. Chiang absent, the Board adopted the memorandum opinion.

Fashion Marking Services, Inc., 89002434400

7-1-94 to 6-30-97, \$19,309.38 Tax

Considered by the Board: May 9, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

Vasant Kale, 89002204350

10-1-94 to 12-31-97, \$25,152.35 Tax

\$00.00 Penalty, Negligence

Considered by the Board: May 9, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang absent, the Board ordered that the petition be redetermined as recommended by the Appeals Section.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,
ADJUDICATORY****Pacific Corp., 90027**

1984, \$498,412.00 Assessment

1985, \$517,835.00 Assessment

1986, \$58,523.00 Assessment

1987, \$151,313.00 Assessment

1988, \$359,742.00 Assessment

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1989, \$461,972.00 Assessment

Considered by the Board: Formal Opinion

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang absent, the Board adopted the formal opinion, option 2, removing the words "franchise and income."

Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board ordered to remove footnote 17 from the formal opinion, option 2.

John T. Nickel, 104288

1993, \$146,418.00 Assessment

Considered by the Board: May 30, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Sam Anton and Mary Dugom, 126840

1995, \$319.00 Assessment

Considered by the Board: July 9, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board adopted a decision sustaining the action of the Franchise Tax Board.

David Scharf, M.D., Inc., 134020

1997, \$387.01 Assessment

Considered by the Board: July 25, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board adopted a decision sustaining the action of the Franchise Tax Board.

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Donoco Enterprises Trust and Donald K. Mullins, 135314

1997, \$156,243.00 Tax

\$39,060.75 Penalty, Failure to Furnish Information

\$31,248.60 Penalty, Accuracy Related

Keithlee Family Trust and Neva L. Mullins, 135339

1997, \$159,374.00 Tax

\$39,843.50 Penalty, Failure to Furnish Information

\$31,874.80 Penalty, Accuracy Related

Donald K. and Neva L. Mullins, 135331

1997, \$154,983.00 Tax

\$38,745.75 Penalty, Failure to Furnish Information

\$30,996.60 Penalty, Accuracy Related

Considered by the Board: August 1, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board adopted a decision sustaining the action of the Franchise Tax Board and imposed a \$3,000.00 frivolous appeal penalty.

Eugene P. and Kerry A. Smith, 136380

1997, \$2,971.54 Claim for Refund

Considered by the Board: May 30, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Dale Mitchell Heindell, 103375

1980, \$2,204.59 Claim for Refund

Considered by the Board: June 20, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board adopted a decision granting the petition for rehearing.

Richard Delgado, 129715

1997, \$950.00 Assessment

Considered by the Board: February 6, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

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Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board adopted a decision reversing the action of the Franchise Tax Board.

SALES AND USE TAX MATTERS, CREDITS AND CANCELLATIONS, ADJUDICATORY

AT & T Communications of California, 150422

1-1-95 to 12-31-99, \$666,318.24

Considered by the Board: July 9, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board approved the credit and cancellation as recommended by staff.

LEGAL APPEALS MATTERS, CONSENT

The Board deferred consideration of the following matter: *Albert Kelly Ruiz, 89000025720.*

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Parrish, seconded by Mr. Andal and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board made the following orders:

Dennis R. Wade and Dawn Wade, 89002438270

1-1-98 to 2-5-98, \$1,175.66 Tax

\$117.57 Penalty, Failure to File

Action: Redetermine as recommended by the Appeals Section.

Harbor Electronics, Inc., 89000681020, 80109

7-1-94 to 6-30-97, \$34,867.29 Tax

7-1-94 to 6-30-97, \$40,730.00 Claim for Refund

Action: Redetermine as recommended by the Appeals Section.

Albert Kelly Ruiz, 89000025720

7-1-95 to 6-30-98, \$8,515.89 Tax

\$851.63 Penalty, Negligence

Action: The Board deferred consideration of this matter.

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Basim Jawad Ridha, 75690

10-1-95 to 12-31-98, \$9,538.82 Tax

\$00.00 Penalty, Negligence

Action: Deny the petition for rehearing as recommended by the Appeals Section.

Summit Imports, Inc., 89002311430

10-1-94 to 9-30-97, \$5,000.11 Tax

\$00.00 Penalty, Finality

Action: Deny the petition for rehearing as recommended by the Appeals Section.

Alan Mitchell Brawer, 89002195380

1-1-94 to 3-31-97, \$39,746.36 Tax

\$00.00 Penalty, Negligence

Action: Deny the petition for rehearing as recommended by the Appeals Section.

Rodney Nardi and John Kaleel, 55870

4-1-95 to 3-31-97, \$26,216.24 Tax

\$2,621.64 Penalty, Negligence

Hollywood at the El Rey, Inc., 55875

4-1-97 to 3-31-98, \$30,993.71 Tax

\$3,099.37 Penalty, Negligence

Action: Deny the petition for rehearing as recommended by the Appeals Section.

CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board made the following orders:

Alphonso Eiland, 130105

1998, \$797.00 Tax

\$199.25 Penalty, Late Filing

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Kendall L. Jones and Marilyn J.C. Jones, 150796

1998, \$848.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Dawn Granath, 152567

1999, \$605.00 Tax

Action: Sustain the action of the Franchise Tax Board.

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Karen Schoonmaker, 152618

1999, \$882.00 Tax

Action: Reverse the action of the Franchise Tax Board.

Steve Miraglia, 153385

1996, \$3,000.93 Tax

Action: Sustain the action of the Franchise Tax Board.

Jerald J. Droll and Darryl A. Lang, 154078

1996, \$322.57 Tax

Action: Sustain the action of the Franchise Tax Board.

Peter Y. Huang, 163814

1997, \$2,129.00 Tax

Action: Sustain the action with concession by the Franchise Tax Board.

Stanley D. Kaye, 118471

1998, \$2,102.00 Tax

\$525.50 Penalty, Late Filing

\$528.25 Penalty, Notice and Demand

Action: Deny the petition for rehearing.

Dorothy Eakins, 139376

1997, \$514.94 Tax

Action: Deny the petition for rehearing.

Timothy K. Quick, 89002465050

1987, \$16,917.00 Tax

\$8,458.50 Penalty, Late Filing and Notice and Demand

1988, \$10,839.00 Tax

\$2,709.75 Penalty, Late Filing

1989, \$57,711.00 Tax

\$28,855.50 Penalty, Late Filing and Notice and Demand

1990, \$37,857.00 Tax

\$18,928.50 Penalty, Late Filing and Notice and Demand

1991, \$27,262.00 Tax

Action: Deny the petition for rehearing, modifying the action of the Franchise Tax Board.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board made the following orders:

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Tracy Walker, 139751

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Louis Charles Shepherd, Jr., 153316

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Nami Park, 153320

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Doris Holly-Barksdale, 154044

2001, \$348.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Catherine Nnoruka, 154085

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Julia Flores, 154117

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Glenn Johnson, 154123

2001, \$225.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Leonard Haring, 154128

2001, \$348.00 Claim for Credit

Action: Reverse the action of the Franchise Tax Board.

Sophia Loan T. La, 156133

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Daniel W. James, 156249

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Remigio Gutierrez, 156254

2001, \$240.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

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Flarieh Isakharian, 156268

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Kimberly Aguilar, 156880

2001, \$1.00 or more Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

Mikhail Poyurovskiy, 166738

2001, \$205.00 Claim for Credit

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, RELIEF OF PENALTIES
AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

The Board deferred consideration of the following matters: *Lucky Stores Inc., 183933, Lucky Stores Inc., 183935 and Lucky Stores Inc., 183937.*

With respect to the Sales and Use Tax Matters, Redeterminations, Relief of Penalties and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Andal and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board made the following orders:

Econo-Lube Inc., 58339

10-1-96 to 9-3-99, \$84,428.87

Action: Approve the redetermination as recommended by staff.

Pharmacia & UpJohn Company, 109505

4-1-96 to 6-30-99, \$189,083.31

Action: Approve the redetermination as recommended by staff.

Peak Technologies Inc., 151016

1-1-97 to 12-31-99, \$109,734.77

Action: Approve the redetermination as recommended by staff.

Aircraft Ventures LLC, 141462

9-29-98, \$300,445.87

Action: Approve the redetermination as recommended by staff.

Super Marine of California LTD, 143439

5-10-98, \$72,600.00

Action: Approve the redetermination as recommended by staff.

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Thermo Black Clawson, Inc., 141871

7-1-97 to 6-30-00, \$144,723.47

Action: Approve the redetermination as recommended by staff.

Atofina Chemicals Inc., 154909

10-1-95 to 6-30-00, \$134,628.13

Action: Approve the redetermination as recommended by staff.

Lucky Stores Inc., 183933

8-4-00 to 11-2-00, \$194,613.70

Action: The Board deferred consideration of this matters.

Lucky Stores Inc., 183935

11-3-00 to 11-30-00, \$144,000.00

Action: The Board deferred consideration of this matters.

Agilent Financial Services Inc., 183731

10-1-01 to 12-31-01, \$54,048.10

Action: Approve the relief of penalty as recommended by staff.

Calpeak Power LLC, 183932

10-1-01 to 12-31-01, \$605,153.90

Action: Approve the relief of penalty as recommended by staff.

Lucky Stores Inc., 183937

8-4-00 to 11-02-00, \$602,545.10

Action: The Board deferred consideration of this matters.

Troy Plastics of California Inc., 157345

7-1-86 to 6-30-89, \$108,599.85

Action: Approve the denial of claim for refund as recommended by staff.

Advanced Architectural Frames, 143621

7-1-98 to 6-30-01, \$90,261.00

Action: Approve the denial of claim for refund as recommended by staff.

Principal Life Insurance Company, 185947

4-1-96 to 6-30-99, \$75,551.12

Action: Approve the denial of claim for refund as recommended by staff.

Coach Inc., 129060

1-1-01 to 3-31-01, \$162,530.00

Action: Approve the denial of claim for refund as recommended by staff.

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SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board made the following orders:

Camera Platforms International Inc., 184842

4-1-98 to 9-30-00, \$260,218.31

Action: Approve the credit and cancellation as recommended by staff.

Amgen, 185997

7-1-93 to 12-31-96, \$136,193.35

Action: Approve the credit and cancellation as recommended by staff.

Transamerican Plastics Corporation, 183733

7-1-98 to 12-31-98, \$92,437.80

Action: Approve the credit and cancellation as recommended by staff.

Bugle Boy Industries Inc., 185858

1-1-97 to 12-31-00, \$1,521,292.53

Action: Approve the credit and cancellation as recommended by staff.

Colinear System Inc., 184335

7-1-92 to 12-31-96, \$81,298.71

Action: Approve the credit and cancellation as recommended by staff.

Arashinder Singh, 184334

4-1-99 to 3-31-00, \$83,040.11

Action: Approve the credit and cancellation as recommended by staff.

D. Longo Inc., 161357

7-1-00 to 9-30-00, \$54,901.71

Action: Approve the refund as recommended by staff.

Bofors Incorporated, 167172

1-1-01 to 3-31-01, \$53,187.98

Action: Approve the refund as recommended by staff.

Mc-Grath Steel Company, 186346

1-1-99 to 12-31-01, \$66,884.36

Action: Approve the refund as recommended by staff.

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Toshiba Machine Co. America, 154559

4-1-01 to 9-30-01, \$128,298.18

Action: Approve the refund as recommended by staff.

Comp USA Inc., 17115

7-1-92 to 3-31-96, \$171,854.98

Action: Approve the refund as recommended by staff.

Tri-City Hospital District, 98670

7-1-97 to 6-30-01, \$100,876.49

Action: Approve the refund as recommended by staff.

Southwest Marine Inc., 60024

1-1-97 to 12-31-00, \$113,779.91

Action: Approve the refund as recommended by staff.

Mc-Whorter Stationery Co. Inc., 144012

1-1-01 to 9-30-01, \$69,954.00

Action: Approve the refund as recommended by staff.

Mitsubishi International Corp., 185757

1-1-98 to 12-31-00, \$73,279.64

Action: Approve the refund as recommended by staff.

Great Lakes Dredge & Dock Co., 182807

1-1-98 to 3-31-02, \$210,898.60

Action: Approve the refund as recommended by staff.

Benchmark Confrnc. Resorts California, 183144

4-1-98 to 3-31-01, \$152,093.10

Action: Approve the refund as recommended by staff.

Miele, Incorporated, 162325

1-1-01 to 3-31-01, \$52,160.67

Action: Approve the refund as recommended by staff.

Principal Life Insurance Co., 28982

4-1-96 to 6-30-99, \$151,801.86

Action: Approve the refund as recommended by staff.

Reliant Energy Etiwanda, LLC, 163713

1-1-01 to 6-30-01, \$226,278.95

Action: Approve the refund as recommended by staff.

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Associated Sales & Bag Co Inc., 100008

4-1-99 to 6-30-00, \$68,518.64

Action: Approve the refund as recommended by staff.

Re'Nu Office Systems, Inc., 142409

4-1-00 to 9-30-00, \$93,315.25

Action: Approve the refund as recommended by staff.

G P Resources Inc., 145227

1-1-01 to 6-30-01, \$348,442.51

Action: Approve the refund as recommended by staff.

Northridge Equipment Co., 119175

10-1-97 to 6-30-00, \$1,426,237.28

Action: Approve the refund as recommended by staff.

California State Automobile Assn., 135462

4-1-98 to 6-30-01, \$907,528.40

Action: Approve the refund as recommended by staff.

California State Automobile Assn., 183143

7-1-01 to 12-31-01, \$

Action: Approve the refund as recommended by staff.

Odenberg, Inc., 97572

4-1-99 to 9-30-99, \$76,231.45

Action: Approve the refund as recommended by staff.

Patelco Credit Union, 127953

4-1-98 to 3-31-02, \$899,607.34

Action: Approve the refund as recommended by staff.

Sym-Tek Incorporated of Minnesota, 181842

7-1-98 to 12-31-00, \$51,336.13

Action: Approve the refund as recommended by staff.

Interwave Communications, Inc., 164708

10-1-01 to 12-31-01, \$59,875.72

Action: Approve the refund as recommended by staff.

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SPECIAL TAXES MATTERS, REFUNDS, ADJUDICATORY

Sunamerica Life Insurance Company, 89000899800

1-1-92 to 12-31-97, \$70,023.47

Considered by the Board: August 20, 2002

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Chiang absent, the Board approved the refund as recommended by staff.

SPECIAL TAXES MATTERS, REDETERMINATION AND RELIEF OF PENALTIES, CONSENT

With respect to the Special Taxes Matters, Redetermination and Relief of Penalties, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Ms. Mandel not participating in *Geico General Insurance Co., 184325*, *Government Employees Insurance Co., 184326*, and *Safety National Casualty Corp., 185733*, in accordance with Government Code section 7.9, Mr. Chiang absent, the Board made the following orders:

Geico General Insurance Co., 184325

1-1-02 to 3-31-02, \$127,428.50

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Government Employees Insurance Co., 184326

1-1-02 to 3-31-02, \$77,265.00

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Safety National Casualty Corp., 185733

1-1-00 to 12-31-00, \$51,889.10

Action: Approve the relief of penalty as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

National Petroleum Marketing Inc., 89000189310

1-1-92 to 9-30-94, \$1,122,095.69

Action: Approve the redetermination as recommended by staff.

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SPECIAL TAXES MATTERS, REFUNDS, CONSENT

With respect to the Special Taxes Matters, Refunds, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Ms. Mandel not participating in *American Home Assurance Co.*, 156372, in accordance with Government Code section 7.9, Mr. Chiang absent, the Board made the following orders:

McLane Suneast Inc., 183555

7-1-02 to 7-31-02, \$100,065.97

Action: Approve the refund as recommended by staff.

American Procurement & Lgstcs., Co., 183556

7-1-02 to 7-31-02, \$50,416.83

Action: Approve the refund as recommended by staff.

American Home Assurance Co., 156372

1-1-00 to 12-31-00, \$212,481.74

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

McLane Sunwest, Inc., 186370

6-1-02 to 6-30-02, \$1,029,639.22

Action: Approve the refund as recommended by staff.

PROPERTY TAX MATTERS, CONSENT

With respect to the Property Taxes Matters, Consent Agenda, upon a single motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Chiang absent, the Board made the following orders:

Petitions for Reassessment of 2002 Unitary Value

San Diego Gas & Electric Co., 183395

2002, \$2,711,000,000.00 Value

Action: Adopt staff's recommendation on petition for reassessment of 2002 unitary value. Ms. Mandel not participating in accordance with Government Code section 7.9.

Southern California Gas Co., 183411

2002, \$2,605,000,000.00 Value

Action: Adopt staff's recommendation on petition for reassessment of 2002 unitary value. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Primus Telecommunications, Inc., 174275

2002, \$4,830,000.00 Value

Action: Adopt staff's recommendation on petition for reassessment of 2002 unitary value. Ms. Mandel not participating in accordance with Government Code section 7.9.

Petitions for Penalty Abatement on 2002 Unitary Value

Lodi Gas Storage LLC, 183584

2002, \$84,400,000.00 Value

\$8,440,000.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Via Wireless LLC, 183956

2002, \$60,200,000.00 Value

\$6,020,000.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

UbiquiTel, Inc., 183768

2002, \$21,500,000.00 Value

\$2,150,000.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

OmniPoint Communications, Inc., 184073

2002, \$25,700,000.00 Value

\$2,570,000.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Federal Communications Corp., 174283

2002, \$92,900.00 Value

\$9,290.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Big Bear Telecom, Inc., 183582

2002, \$9,200.00 Value

\$920.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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True America Communications, Inc., 183708

2002, \$111,000.00 Value

\$11,100.00 Penalty

Action: Deny the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Enhanced Global Convergence Services, Inc., 174267

2002, \$522,000.00 Value

\$52,200.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

U.S.A. SoftTronic Corporation, 173592

2002, \$180,000.00 Value

\$18,000.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Verizon Avenue Corporation, 173595

2002, \$741,000.00 Value

\$74,100.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

NovaTel Global, LLC, 183766

2002, \$249,000.00 Value

\$24,900.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

BAK Communications, LLC, 183410

2002, \$972,000.00 Value

\$97,200.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

Dial Thru International Corporation, 183413

2002, \$882,000.00 Value

\$88,200.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Universal Access, Inc., 183736

2002, \$3,820,000.00 Value

\$382,000.00 Penalty

Action: Grant the petition for penalty abatement on 2002 unitary value as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE

Unitary Assessment

Winstar Communications, LLC (7935)

2002, \$1,060,000.00 Unitary Assessment

\$106,000.00 Penalty

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Chiang absent, the Board adopted the unitary value and deleted the late-filing penalty.

Audit

Rhythms Links, Inc., (7719)

2001, \$3,890,000.00 Escaped Assessment

\$389,000.00 Penalty

\$233,400.00 Interest

2000, \$7,650,000.00 Escaped Assessment

\$765,000.00 Penalty

\$1,147,500.00 Interest

1999, \$2,040,000.00 Escaped Assessment

\$204,000.00 Penalty

\$489,600.00 Interest

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Chiang absent, the Board adopted the audit escaped assessments, plus penalties and assessment in lieu of interest as recommended by staff.

Board Roll Corrections

Board Roll Corrections

2001 and 2002 Board Rolls

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, Mr. Chiang absent, the Board approved Board Roll Corrections as recommended by staff (Exhibit 9.24).

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The Board adjourned at 4:00 p.m.

The foregoing minutes are adopted by the Board on November 13, 2002.